

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND, NORTHERN DIVISION

COMMUNITY CHURCH OF ASHBURN,
Plaintiff,
v. CIVIL NO.: WDQ-10-0121
HARBOR VIEW CONTRACTORS,
et al.,
Defendants.

* * * * *

MEMORANDUM OPINION

Harbor View Contractors ("Harbor View") and Jeffrey A. Goodwin (collectively, the "defendants") moved to vacate the judgment by confession entered against them in favor of Community Church of Ashburn ("Community Church"). The Court denied that motion. Pending is the defendants' motion for reconsideration, and Community Church's motion for examination under oath and production of documents. For the following reasons, the defendants' motion will be denied, and Community Church's motion will be granted.

I. Background

On February 23, 2009, Community Church and Harbor View met to arbitrate a breach of contract dispute arising out of work that Harbor View was to complete for Community Church. Compl.

1. A consent arbitration award was entered for Community

Church. Showers Aff. ¶ 4. On March 18, 2009, the parties entered into a settlement agreement requiring Harbor View to make three payments¹ to Community Church, which were personally guaranteed by Goodwin. Paper No. 1, Ex. B at 2. That day, the parties also signed a confessed judgment note for \$500,000. Paper No. 1, Ex. C. The balance would be waived if Harbor View and Goodwin made the three payments on time. *Id.* at 1.

Harbor View made only one payment. Compl. 2. Neither Harbor View nor Goodwin cured the default upon Community Church's demand. *Id.* Thus, the unpaid balance of the note, plus interest and action and attorneys' costs, became due. *Id.*

On January 18, 2010, Community Church filed a complaint for the entry of judgment by confession. On February 19, 2010, Magistrate Judge James Bredar ordered that judgment by confession be entered against Harbor View, individually, and Harbor View and Goodwin, jointly and severally. Paper No. 7. On April 2, 2010, the defendants moved to vacate the judgment. Paper No. 9. On April 5, 2010, Community Church opposed that motion. Paper No. 11. On May 20, 2010, this Court denied the defendants' motion to vacate as untimely and lacking a meritorious defense. Paper No. 12 at 1. On June 2, 2010, the defendants filed a motion to reconsider that Order. Paper No.

¹ In the amounts of \$75,000.00, \$78,459.00, and \$55,523.00. Paper No. 1, Ex. C at 1.

16.² On June 4, 2010, Community Church opposed that motion. Paper No. 17. On June 16, 2010, Community Church filed an unopposed motion for examination under oath and production of documents. Paper No. 20.

II. Analysis

A. Defendants' Motion for Reconsideration

1. Standard of Review

The Federal Rules of Civil Procedure do not recognize a motion for reconsideration. *Auto Services Co. v. KPMG, LLP*, 537 F.3d 853, 855 (8th Cir. 2008). A party may move to alter or amend a judgment under Rule 59(e), or for relief from a judgment or order under Rule 60. See Fed. R. Civ. P. 59(e), 60.³ A "judgment" is "a decree and any order from which an appeal lies." *Auto Servs. Co.*, 537 F.3d at 856 (quoting Fed. R. Civ. P. 54(a)) (internal quotation marks omitted). A motion to alter or amend filed within 28 days of the judgment is analyzed under Rule 59(e); if the motion is filed later, Rule 60(b) controls. See Fed. R. Civ. P. 59(e); *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 280 (4th Cir. 2008); *In re Burnley*, 988 F.2d 1, 2-

² The defendants did not identify the Federal Rule of Civil Procedure on which their motion was based. See Paper No. 16 at 1 (citing only Local Rule 105.10 (Md. 2010), which governs "Motions to Reconsider").

³ Generally, interlocutory orders are subject to modification "prior to the entry of a final judgment adjudicating the claims to which they pertain." *Williams v. Cnty. of Westchester*, 171 F.3d 98, 102 (2d Cir. 1999); Fed. R. Civ. P. 54(b).

3 (4th Cir. 1992). Because this Court's May 20, 2010 Order was a judgment, and the defendants filed their motion for reconsideration within 28 days, Rule 59(e) governs it.

Under Rule 59(e), a court may grant a motion to alter or amend the judgment to: (1) accommodate an intervening change in controlling law; (2) account for new evidence previously unavailable; or (3) correct a clear error of law or prevent manifest injustice. *Gagliano v. Reliance Standard Life Ins. Co.*, 547 F.3d 230, 241 n.8 (4th Cir. 2008) (citation and internal quotation marks omitted). Rule 59(e) may not be used to "relitigate old matters" or "raise arguments" that could have been made before judgment was entered. *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2617 n.5 (2008) (citation and internal quotation marks omitted); *Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002).

Mere disagreement with the court's decision does not justify granting a Rule 59(e) motion. *Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir. 1993). Indeed, "[w]he[n] a motion does not raise new arguments, but merely urges the court to 'change its mind,' relief is not authorized." *Medlock v. Rumsfeld*, 336 F. Supp. 2d 452, 470 (D. Md. 2002); see *Erskine v. Bd. of Educ.*, 207 F. Supp. 2d 407, 408 (D. Md. 2002).

2. The May 20, 2010 Order Denying the Motion to Vacate

The defendants argue that the Court should reconsider the May 20, 2010 Order because (1) it did not address their Servicemembers Civil Relief Act argument, and (2) the person who was allegedly served has now stated that she was not. Paper No. 16 ¶¶ 1-2.

a. Servicemembers Civil Relief Act

In their motion to vacate, the defendants argued that the judgment by confession was procedurally defective because it did not comply with § 521 of the Servicemembers Civil Relief Act (the "Act"). 50 app. U.S.C. § 521; Paper No. 9 at 2-4. Section 521, which "protect[s] servicemembers against default judgments," applies to civil actions or proceedings "in which the defendant does not make an appearance." 50 app. U.S.C. § 521.

Before judgment may be entered for a plaintiff, § 521 requires that he must file an affidavit stating "whether or not the defendant is in military service," or "that the plaintiff is unable to determine" this. *Id.* § 521(b)(1)(A)-(B). Because Community Church's affidavit did not state either as to Goodwin, see Showers Aff., the defendants argued that the entry of judgment by confession was erroneous, Paper No. 16-2 at 3. In the May 20, 2010 Order denying the motion to vacate, the Court did not address this argument. See Paper No. 12.

This issue would have been moot because the motion to vacate--filed three days after the judgment became final--was untimely.⁴ Also, this argument lacks merit because § 521 applies to default judgments, not judgments by confession. See 50 app. U.S.C. § 521 (titled "protection of servicemembers against default judgments").⁵ As no "clear error" or "manifest injustice" justifies Rule 59(e) relief, *Gagliano*, 547 F.3d at 241 n.8, failure to address the Act is not an appropriate basis for reconsideration.

b. Improper Service

The defendants also claim that there is an "issue" about proper service. On April 5, 2010, Community Church filed an affidavit of service that Goodwin's wife was served with the judgment by confession documents at their home on February 28, 2010. Paper No. 10. Mrs. Goodwin now states that (1) she has

⁴ See Local Rule 108.1.d (Md. 2010); Paper No. 12 at 1; *cf.* *Yuzary v. United States*, No. 04 Civ. 2809 (RPP), 96 CR. 967 (RPP), 2006 WL 59519, at *2 (S.D.N.Y. Jan. 10, 2006) (court's failure to address defendant's argument did not justify Rule 59(e) relief because the court lacked jurisdiction when the defendant's request was made).

⁵ See *Arthur v. Gardner*, 42 Pa. D. & C. 549, 550 (Pa. Com. Pl. 1941) (Act does not require affidavit for a judgment by confession because that is "not a default of any appearance by the defendant, but a default in payment"). If the defendants were analogizing to § 521(g), which governs the "vacation or setting aside of default judgments," this too is improper. It must be shown that, *inter alia*, the "servicemember was materially affected by reason of . . . military service in making a defense to the action." 50 app. U.S.C. § 521(g)(1)(A). Goodwin has not asserted he was in the military.

"no recollection and [does] not believe" that she was served, and (2) neither her attorney nor Goodwin received the documents. Paper No. 16, Ex. 2 ¶¶ 3-4.⁶

Although the defendants do not cite a legal basis for their improper service argument, it appears they are asserting "insufficient service of process" under Fed. R. Civ. P. 12(b)(5). The defendants have waived this defense because it was not made in a Rule 12 motion. See Fed. R. Civ. P. 12(h)(1)(B)(i).

Even had Mrs. Goodwin not been personally served, service of process would have been satisfied by "leaving [the summons and complaint] at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there." Fed. R. Civ. P. 4(e)(2)(B). The process server has affirmed that he served the documents on an adult female who identified herself as Mrs. Goodwin and "acknowledged [she and Goodwin] both live[d] at [that] address." Aff. of Service ¶¶ 2-3. Accordingly, improper service is not a basis for reconsideration.

⁶ The defendants label Mrs. Goodwin's statement an affidavit, but it was neither "swor[n]," 2A C.J.S. *Affidavits* § 25 (2010), nor made "under penalty of perjury," see 28 U.S.C. § 1746.

B. Community Church's Motion for Examination Under Oath and
Production of Documents

Community Church seeks an order requiring (1) Mr. and Mrs. Goodwin to appear before a United States Magistrate Judge for examination under oath; and (2) Goodwin to document his assets, including those he did not reveal at his deposition. Paper No. 20 at 1-3.⁷ The defendants have not opposed the motion.

Under Fed. R. Civ. P. 69(a)(2), a judgment creditor seeking judgment or execution "may obtain discovery from any person" under the "[federal] rules or by the procedure of the state where the court is located." Here, Community Church's judgment by confession against Goodwin entitles it to this procedure.⁸

1. Examination Under Oath

Maryland Civil Procedure Rule 2-633(b) permits "the court where the judgment was entered" to order the "appearance for examination under oath" of (1) judgment debtor Goodwin, or (2) any other person "if the court is satisfied by . . . proof that it is probable" she has "[Goodwin's] property." Mrs. Goodwin is

⁷ Neither Goodwin nor his wife attended their noticed depositions; they have not responded to Community Church's requests to reschedule. See Paper No. 20 at 2, Ex. A, Ex. B.

⁸ See Paper No. 7 (judgment against Goodwin and Harbor View, jointly and severally, for \$138,460.14 plus court costs and interest); *Black's Law Dictionary* (9th ed. 2009) (a "judgment creditor" has the "legal right to enforce execution of a judgment for a specific sum of money"); *id.* (a "judgment debtor" is a "person against whom a money judgment has been entered but not yet satisfied").

married to defendant Goodwin, and they jointly own real property. See Paper No. 20, Ex. 5 at 1 (Baltimore County Mortgage Record); *id.* at 2 (Worcester County Assessment Record). The Court will order Goodwin and Mrs. Goodwin to appear before a United States Magistrate Judge for examination under oath.

2. Production of Documents

Maryland Civil Procedure Rule 2-633(a) allows Community Church to "request[] documents" to "aid enforcement" of its judgment by confession. Goodwin did not attend his deposition or produce the requested documents about his assets. Paper No. 20, Ex. A at 2, Ex. G at 2-3. To enforce its judgment, Community Church must be able to "determin[e the] judgment debtor's assets." *GMAC Real Estate, LLC v. Joseph Carl Secs., Inc.*, No. CV 10-192-PHX-JAT, 2010 WL 432318, at *1 (D. Ariz. Feb. 3, 2010). The Court will order the production of documents.⁹

III. Conclusion

For the reasons stated above, the defendants' motion for reconsideration will be denied, and Community Church's motion

⁹ These documents are listed in (1) Goodwin's subpoena to testify, Paper No. 20, Ex. A at 1 (requiring description of his assets, accounts receivable, financial accounts, claims by Harbor View, and real property); and (2) "Requests for Production--Jeffrey A. Goodwin," *id.*, Ex. G at 2-3 (same plus personal and intellectual property, equipment, and inventory).

for examination under oath and production of documents will be granted.

October 27, 2010
Date

/s/
William D. Quarles, Jr.
United States District Judge